



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

**MEMORANDUM**

**TO:** The Commission

**FROM:** Lisa J. Stevenson  
Acting General Counsel

Kathleen M. Guith  
Associate General Counsel for Enforcement

Stephen A. Gura  
Deputy Associate General Counsel for Enforcement

**BY:** Mark Allen *MA*  
Assistant General Counsel

Delbert K. Rigsby *DKR*  
Attorney

**SUBJECT:** MUR 6857 (Marilinda Garcia for Congress, *et al.*)

At the April 19, 2017, Executive Session, the Commission considered the First General Counsel's Report in MUR 6857 and found reason to believe that Jerry Gappens violated 52 U.S.C. § 30118(a), found no reason to believe that Speedway Motorsports, Inc., violated 52 U.S.C. § 30118(a), and found no reason to believe that Lucy Gappens violated the Federal Election Campaign Act of 1971, as amended.<sup>1</sup> The Commission failed by a vote of 2-3 to find reason to believe that New Hampshire Motor Speedway, Inc., violated 52 U.S.C. § 30118(a) and that Marilinda Garcia for Congress and David Horan in his official capacity as treasurer violated 52 U.S.C. §§ 30118(a) and 30114(b).<sup>2</sup>

At that Executive Session, the Commission also decided to enter into conciliation with Jerry Gappens prior to a finding of probable cause to believe.<sup>3</sup> Further, the Commission directed the Office of General Counsel to revise the Conciliation Agreement and Factual and Legal Analysis to reflect that the Commission is only pursuing Jerry Gappens, and to the extent that it

<sup>1</sup> See Certification ¶ 2, MUR 6857 (Apr. 19, 2017).

<sup>2</sup> See *id.* ¶ 1.

<sup>3</sup> See *id.* ¶ 3.

remains relevant, incorporate the FLA edits circulated by Commissioner Weintraub's Office on March 22, 2017 at 6:34 p.m.<sup>4</sup>

We recommend that the Commission approve the enclosed Conciliation Agreement and Factual and Legal Analysis on a 48-hour no-objection basis.

**RECOMMENDATIONS:**

1. Approve the attached Conciliation Agreement for Jerry Gappens.
2. Approve the attached Factual and Legal Analysis for Jerry Gappens, Speedway Motorsports, Inc., and Lucy Gappens.

**Attachments**

3. Factual and Legal Analysis for Jerry Gappens, Speedway Motorsports, Inc., and Lucy Gappens

<sup>4</sup> See *id.* The Conciliation Agreement proposed in the FGCR addressed both Jerry Gappens and New Hampshire Motor Speedway, Inc. See FGCR Attach. 4. The Factual and Legal Analysis proposed in the FGCR addressed Jerry Gappens and New Hampshire Motor Speedway, Inc., as well as Speedway Motorsports, Inc., and Lucy Gappens. See FGCR Attach. 2.

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Jerry Gappens  
Speedway Motorsports, Inc.  
Lucy Gappens

MUR 6857

**I. INTRODUCTION**

The Complainants<sup>1</sup> allege that New Hampshire Motor Speedway, Inc. ("NHMS"), or its parent company, Speedway Motorsports, Inc. ("SMI"), paid for a campaign event for Marilinda Garcia for Congress ("Committee") that was held at NHMS in June 2014, and thus made a corporate contribution in violation of the Federal Election Campaign Act of 1971, as amended (the "Act").

Respondents acknowledge that NHMS paid for the Committee event. Accordingly, as discussed below, the Commission found that Jerry Gappens, an officer of NHMS, impermissibly consented to the making of NHMS's corporate contribution in violation of 52 U.S.C. § 30118(a). Additionally, the Commission found that there is no reason to believe that SMI violated 52 U.S.C. § 30118(a). Finally, the Commission found that there is no reason to believe that Lucy Gappens violated the Act.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

Marilinda Garcia was a candidate for election in the Second Congressional District of New Hampshire in 2014. The Complainants state that the Committee held a "Race for Congress" fundraiser event at NHMS ("the event"), and the expenses related to the event included rental of the venue, live music, food, a raffle prize of two "VIP Access" tickets to an

<sup>1</sup> There were two nearly identical complaints filed against the Respondents. For purpose of convenience, the Commission considered the complaints together.

1 upcoming NASCAR race, and, for “Gold Member” ticket holders, pace car rides around the  
2 speedway.<sup>2</sup> The Complainants allege that the Committee did not report any receipts or  
3 disbursements related to this event on its disclosure reports, other than in-kind contributions from  
4 Jerry Gappens and his wife, Lucy Gappens, for \$2,600 and \$2,320, respectively.<sup>3</sup> The  
5 Complaints identify Jerry Gappens as Executive Vice President and General Manager of SMI,  
6 the parent company of NHMS.<sup>4</sup> Further, the Complaints maintain that Jerry Gappens does not  
7 own NHMS, and SMI cannot legally make a contribution to a federal candidate.<sup>5</sup> Thus, the  
8 Complaints, reasonably construed, allege that SMI, NHMS’s corporate parent, and not the  
9 Gappens, made the in-kind contributions, and such corporate contributions are prohibited under  
10 the Act.

11 SMI, Jerry Gappens and Lucy Gappens (“Joint Respondents”) responded jointly to the  
12 Complaints asserting that SMI is a corporation, its principal place of business is in Charlotte,  
13 North Carolina, it owns NHMS and other race tracks, and it was unaware of the event until it  
14 received the Brown Complaint.<sup>6</sup> The Joint Respondents contend that SMI did not intend to  
15 contribute food and race tickets to the Committee, NHMS did not sponsor the event, and there  
16 was a misunderstanding between Jerry Gappens, NHMS’s Executive Vice President and General

<sup>2</sup> Judy Brown Compl. at 1 and Ex. 1; Lawson Brouse Compl. at 1 and Ex. 1. The tickets were \$100 for “Gold Members,” \$35 for “Blue Members” and \$15 for “kids.” See Ex. 1 of both Complaints.

<sup>3</sup> Brown Compl. at 1 and Brouse Compl. at 1. The Committee’s original 2014 July Quarterly Report discloses that the contributions from the Gappens were “in-kind.” See 2014 July Quarterly Report at 16-17 (July 15, 2014). The Committee’s Amended 2014 July Quarterly Report discloses that these contributions were for “event tickets, food and beverages.” See Amended 2014 July Quarterly Report at 17 (Sept. 17, 2014).

<sup>4</sup> Brown Compl. at 1 and Brouse Compl. at 1.

<sup>5</sup> *Id.*

<sup>6</sup> Joint Resp. to Brown Compl. at 1 and Joint Resp. to Brouse Compl. at 1. NHMS is incorporated in the State of New Hampshire.

1 Manager, and the Committee as to who was responsible for the food and race tickets.<sup>7</sup> The Joint  
2 Respondents explain that NHMS did not send an invoice to the Committee, as promised, and  
3 Gappens left his position with NHMS in September 2015.<sup>8</sup> The Joint Respondents assert that on  
4 October 27, 2016, NHMS delivered an invoice for \$4,485 to the Committee for certain event  
5 costs.<sup>9</sup> The Joint Respondents maintain that Lucy Gappens did not provide an in-kind  
6 contribution to the Committee, did not attend the event, and was not aware of it.<sup>10</sup>

7 Information available to the Commission indicates that Jerry Gappens set up the event at  
8 NHMS, and he agreed to donate certain event costs. There is also information available that  
9 NHMS sent an email to the Committee stating that all donations were compliments of Jerry  
10 Gappens, and "compliments of Jerry Gappens" was printed on the tickets given to campaign  
11 supporters.

12 **B. Legal Analysis**

13  
14 The Act defines "contribution" to include "any gift, subscription, loan, advance, or  
15 deposit of money or anything of value made by any person for the purpose of influencing any  
16 election for Federal office."<sup>11</sup> "Anything of value" includes all in-kind contributions and, unless  
17 otherwise exempted, the provision of any goods or services without charge or at a charge that is  
18 less than the usual and normal charge for such goods or services.<sup>12</sup>

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<sup>7</sup> Joint Resp. to Brown Compl. at 2 and Joint Resp. to Brouse Compl. at 2.

<sup>8</sup> Joint Resp. to Brouse Compl. at 2.

<sup>9</sup> *Id.* and attached invoice.

<sup>10</sup> Joint Resp. to Brown Compl. at 2 and Joint Resp. to Brouse Compl. at 2.

<sup>11</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>12</sup> 11 C.F.R. § 100.52(d)(1).

1 The Act and Commission regulations prohibit corporations from making contributions to  
2 a federal political committee (other than independent expenditure-only political committees)<sup>13</sup>  
3 and further prohibit any officer or director of any corporation from consenting to any such  
4 contribution by the corporation.<sup>14</sup>

5 The available information indicates that NHMS, not Jerry and Lucy Gappens, made an  
6 in-kind contribution to the Committee of certain event costs because NHMS's corporate  
7 resources were used for this campaign event.

8 Based upon available information, it appears that Jerry Gappens, an Executive Vice  
9 President and General Manager of NHMS,<sup>15</sup> was instrumental in NHMS's contribution because  
10 he agreed to donate certain event costs. It appears, then, that as an officer of NHMS, Jerry  
11 Gappens consented to NHMS's contribution to the Committee. Thus, the Commission found  
12 that there is reason to believe that Jerry Gappens violated 52 U.S.C. § 30118(a) by consenting to  
13 a corporate contribution.

14 SMI is the parent company of NHMS, and the Joint Responses assert that prior to the  
15 Complaints, SMI was unaware of the event, and the available information does not suggest that  
16 SMI was involved in the event. Therefore, the Commission found that there is no reason to  
17 believe that SMI violated 52 U.S.C. § 30118(a).

18 Finally, the Commission found that there is no reason to believe that Lucy Gappens  
19 violated the Act in this matter because the available information does not indicate she had any

<sup>13</sup> See Advisory Op. 2010-11 (Commonsense Ten) (citing *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)).

<sup>14</sup> 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

<sup>15</sup> NHMS's 2014 Annual Report filed with the New Hampshire Secretary of State's Office lists Jerry Gappens as an officer. 2014 Annual Report (Mar. 10, 2014) at <https://www.sos.nh.gov/imaging/14905448.pdf>.

- 1 involvement here. It seems likely that \$2,320 of the total contribution was wrongly attributed to
- 2 her merely because she is married to Jerry Gappens, who was subject to the contribution limit of
- 3 \$2,600.